Case Western Reserve Law Review

Volume 9 | Issue 3

1958

Insurance

Edgar L. King

On the basis of Section 108 of the Restatement of Property, the common pleas court construed the gift of an undivided half-interest to the son as only a life estate, though the will failed to expressly so limit this gift. As to the disposition of the realty other than the residence, the common pleas court implied from the language of the codicil, which expressly related to the residence, a gift of a remainder to the son contingent upon his surviving T's widow with another contingent remainder to the son's issue if the son predeceased T's widow.[28] The son did predecease T's widow survived by a son and daughter. The common pleas court held that the issue of T's son, upon the death of T's son, took indefeasibly vested remainders and therefore they did not have to survive the life tenant.[29]

ROBERT N. COOK

INSURANCE

In *Unger v. Guarantee Reserve Life Insurance Company*,[1] recovery was sought under a group "School Child Accident Policy." Deceased-insured was standing outside the garage at his home and behind the family automobile when his father in starting the automobile, with the intent of driving him to school, struck and killed him. The question in the case was whether deceased was as yet "en route between the home and the school," that is, does the word "home" refer to the house in which deceased resided or to the entire residential premises. The majority of the court, under the doctrine that ambiguous words in an insurance policy are to be construed against the company, held that only the house was referred to and that therefore deceased was "en route." Judge Zimmerman, dissenting, said that there was no ambiguity and that a reasonable construction of the language required that deceased's conduct be recognized as preparation to depart for school. "Home" is broader than "house" and embraces the entire residential estate. "Ordinarily an incident happens en route when it occurs *after departure* from one place and *during progress* to another. It is difficult to comprehend how an individual can be *between* two places when he is *at* one of them."[2]

In *Yeager v. Pacific Mutual Life Insurance Co.*,[3] the court had to construe an accident and sickness disability insurance policy. Plaintiff had admittedly been accidentally injured and had been paid benefits on

---

[28] SIMES AND SMITH, THE LAW OF FUTURE INTERESTS § 581 (2d ed. 1956); RESTATEMENT, PROPERTY § 252 (1940). *But cf.* Monroe v. Leckey, *supra* n. 17.

[29] SIMES AND SMITH, THE LAW OF FUTURE INTERESTS § 581 (2d ed. 1956); RESTATEMENT, PROPERTY § 252, comment *f* (1940).

that basis. Later, following a fourteen month period of work, he stopped work because of continuing difficulties from the injury. The defendant insurance company then offered to pay at the sickness rate which was lower. Plaintiff refused to accept that settlement and sued to recover at the accident rate. During the interval period when he had worked, plaintiff had worked almost full time, had put in some overtime, had performed almost all of the essential functions of the job assigned to him but had had some material help from fellow workmen (which help was not violative of the rule of the employer). The insurance contract provided that to receive accident benefits the injury must "wholly and continuously disable the insured [plaintiff] and prevent him from performing every duty pertaining to his occupation." The court held that this required injury which prevented plaintiff from performing each and every duty pertaining to his occupation rather than an injury which prevented him from performing only a few such duties. The court accepted the argument that in case of ambiguity an insurance policy must be construed against the company but found no ambiguity.

In *Shepard v. Espy*,[4] decedent had taken out insurance on his own life and designated the woman with whom he was living as the beneficiary. The woman so named was lawfully married to another man. However, the insured caused the beneficiary line on the application to be filled in with "Alice Karns, wife." After the death of the insured, the insurance company paid the face value to the named beneficiary. The administratrix of the estate sued and pleaded in the alternative that the beneficiary be declared to hold the money in trust or that the insurance company be required to make payment to the administratrix. The court of appeals held that the trial court was correct in sustaining a demurrer to the entire petition. The beneficiary who received the money was clearly the person specified by the insured. Any fraud practiced on the insurance company was not available to the administratrix as a basis for this action and had been waived by the insurance company.

A "Mercantile Burglary, Robbery, Fraud Policy" of insurance in *Serves v. Eureka Casualty Company*[5] provided for cancellation "by five days' written notice mailed to the insured . . . stating when thereafter such cancellation shall be effective. . . ." The evidence established that a notice cancelling the policy in suit was mailed. Insured denied receiving it. From a verdict for plaintiff-insured the Company appealed con-

[1] 166 Ohio St. 409, 142 N.E.2d 857 (1957).
[2] *Id.* at 412, 142 N.E.2d at 859.
[3] 166 Ohio St. 71, 139 N.E.2d 48 (1956).
[4] 142 N.E.2d 238 (Ohio Ct. App. 1957).
[5] 103 Ohio App. 268, 144 N.E.2d 120 (1957).

tending that the trial court erred in requiring proof that the notice had been received. The court of appeals upheld the trial court in this contention saying: "If the insured is to have five days' written notice of cancellation by the company, it follows that, for the insured to have such five days' notice, he must receive the notice of cancellation." There was no provision in the policy that mailing of the notice would be the equivalent of actual receipt by the insured.

In *Scott v. Continental Assurance Co.*,[6] plaintiff had two policies with defendant Company which had been obtained through Russell, an agent of the Company. Plaintiff then entered into a contract at the agent's instigation whereby he supposedly contracted with the Company to prepay the premiums for seven years. This action by the agent was completely without the Company's knowledge or authority. The checks whereby plaintiff sought to prepay the premiums were made payable to the agent and cashed by him, and the money received therefor retained by him. Plaintiff sought to recover that sum of money from the Company. The court of appeals held that no recovery could be had. Both policies provided for payment of premiums at the home office and for issuance of receipts therefrom. Both provided that a "change in premium can be made *only* by written request of the insured upon a form prescribed by the Company." The policies were in the possession of the plaintiff. Plaintiff "relied on the obvious lack of authority of Russell in attempting to bind his Company by this so-called 'premium deposit fund' collateral agreement."[7] "It was Russell who betrayed his friend. The Company knew nothing of Russell's perfidy."[8] Plaintiff relied upon Ohio Revised Code section 3911.22 which makes a solicitor an agent of the company. This argument was rejected by the court on the ground that the statute "does not convert an agent with limited power into a general agent possessing unlimited power." The "premium deposit fund" arrangement was an attempted new contract, subsequently made and violative of the express terms of the policies.

In *Lynd v. Sandy & Beaver Valley Farmers Mutual Insurance Co.*,[9] the court held that a plaintiff who is seeking to recover on an insurance policy, fails to sustain his burden of proof when he does not introduce the policy into evidence or explain the impossibility of doing so and the terms of the policy. This is a generally accepted but seldom litigated principle.

EDGAR I. KING

[6] 144 N.E.2d 904 (Ohio Ct. App. 1957).
[7] *Id.*, at 906.
[8] *Id.*, at 907.
[9] 103 Ohio App. 408, 145 N.E.2d 453 (1957).